

LITRATI! WHALEN THREATENS SHEARN

Continued from First Page.

board of directors showed its pages virgin white save for a brief record of the initial meeting at which the witness, Borchardt, and Louis Karsch divided the offices among them and arranged for the prospective division of the profits. The witness testified that there had been only two meetings held and that he had never read the minute book, but that it was "just as I got it off Mr. Keating" (Tom O'Neill's lawyer). Frankenberg's son figured up the profits and there was a division once a month, the witness testified, drawing checks for one-third of the profits in favor of each "his friends," Borchardt and Karsch, and retaining the other third himself.

The stock certificate book was an equally hollow sham. None of the certificates had been removed from the book. They did not even have attached to them the requisite revenue stamps. The day book, showing the receipts and expenditures of the bus corporation, was more illuminating. It showed for the period from May 13 to October 14, of this year, net corporation profits aggregating \$17,150. Divided into thirds, this gave each of the three factors in the corporation the sum of \$5,716 for the five months. The net profits, Mr. Shearn showed, was a capitalization of only \$20,000, amounted to \$5.75 per cent, for the period, or at a rate of 20.5 per cent in a year.

At this point Mr. Shearn sprang his surprise on the disconcerted bus corporation president. Addressing Frankenberg in his most serious tone, the examiner said: "Do you remember my asking you yesterday whether Thomas O'Neill was interested in this company and you said you did not know?"

"Yes sir, that is what I said."

"Are you asking me whether those two friends of yours, Borchardt and Karsch, were not dummies and you said they were not?"

"I can't tell you anything of that kind, I have told you they were not."

"You understand that you are under oath, don't you, and that if you testify falsely you can be convicted of perjury?"

"Yes sir, but I am not testifying falsely. I wouldn't tell you anything else but the truth."

O'Neill and Murphy.

Mr. Shearn then placed in evidence his telling checks. One of them, dated October 18, made out "to cash" in the sum of \$470.95 for one-third of the profits of the preceding month's business, bore, on its reverse side the endorsement of Thomas H. O'Neill. The other, in like amount, and also drawn to the order of "cash," was indorsed to the credit of the "estate of Arthur H. Murphy," and had been collected.

Frankenberg attempted a halting explanation. He said it had been his habit when he did not happen to see "the boys" about Borchardt and Karsch, to hand to "Tom" O'Neill the checks made out to cash and intended for them. As for the checks with which he was confronted bearing his own signature, he declared he could not tell where they might go to after he wrote them out.

It was at this point that Commissioner Whalen dropped into the proceedings with all the precocity of the proverbial pan of milk from the top shelf. After quiet had been restored Mr. Shearn went on with his witness:

"Do you recall each month these checks came back indorsed by the Murphy estate and O'Neill; didn't that attract your attention?"

"Yes, sir." "And you cannot give any reason why you permitted these men to take two-thirds of the profits of your business month after month?"

"I cannot give any reason for it."

Minutes for Banton.

Mr. Shearn called the commission's attention to the fact that it was the late Arthur H. Murphy who, according to the testimony of John McCarthy, insisted on the division of the profits of the business among the three factors of Charles F. Murphy, had "brought this automobile business to his attention and had introduced the interesting Mr. Lynch."

After having gone analytically through the day book figures Mr. Shearn commented: "The commission will note that as poor month as October, making a profit, being much under the average, was \$14,237, which for twelve months would be \$15,261.90, or approximately \$1,268.49 in other words, in as poor a month as that this concern was making approximately 100 per cent profit on an investment of \$20,000 out of the 30 cent bus fare that originated with this 'cent administrator'."

As he excused this witness, to whose discomfiture Commissioner Whalen had been an auditor, Mr. Shearn said: "It seems to me, Mr. Chairman, that it is your clear duty, in view of the testimony that was given yesterday and in view of the documentary evidence that has been introduced to-day, to turn the minutes of this testimony over immediately to District Attorney Banton, with the recommendation that this witness (Frankenberg) be prosecuted for perjury."

"The commission has discussed that during the colloquy here," said Chairman McAneny, "and is prepared to take that action."

Whalen Waives Immunity.

Turning now toward the audience Mr. Shearn said, with a wave of his hand toward the witness chair, "Now, Whalen."

"Yes, Shearn," came the crisp retort from the Mayor's commissioner as he rose and stepped forward. "I am right here."

Mr. McAneny, with a conciliatory smile interposed: "This is a court," he said, addressing Mr. Whalen. "I wish to preserve its dignity. We will be glad to hear whatever statement you have to make."

"I desire no consideration shown me other than is shown to the ordinary witness," said Mr. Whalen.

"One of the first things we do to an ordinary witness in the position of Commissioner Whalen," said Mr. Shearn, "is to ask him to sign a waiver of immunity."

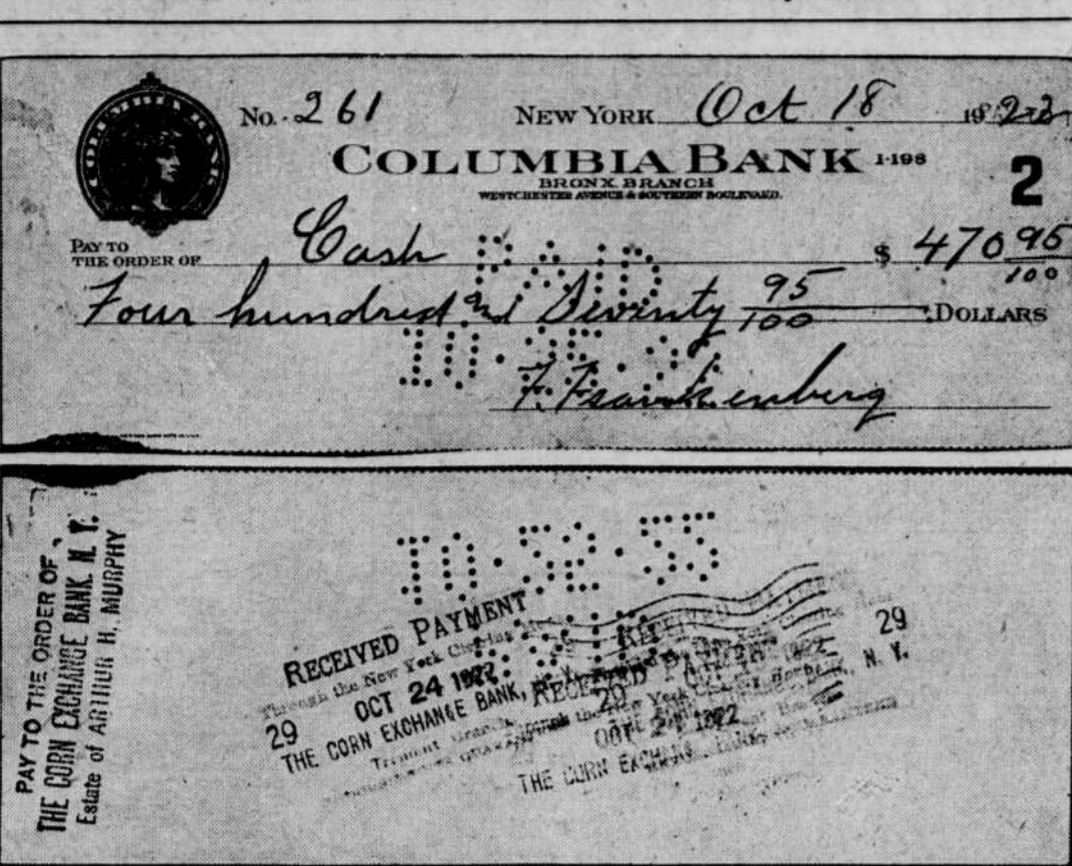
"I shall be very glad to do that," was the rejoinder. "You are not going to get any bunk headlines out of me."

"Please regard my suggestion," Chairman McAneny admonished.

"I would like to," retorted the still angry Whalen, "only in the light of what has transpired in the last couple of days."

Mr. Shearn, with a warning hand, interrupted to say: "You are not on the stand yet."

Bus Check Indorsed to Estate of Tammany Leader



Clarence J. Shearn yesterday showed the Transit Commission two cancelled checks made out to cash by F. W. Frankenberg, head of the West Farms 20 cent bus line. Two checks, for \$470.95 each were indorsed by "Tom" O'Neill, Bronx underboss, and "the estate of Arthur H. Murphy," late Bronx leader. Mr. Shearn said the route was being operated through dummies for political favorites. He estimated the income at \$17,000, a profit of "approximately 100 per cent." on the investment.

"I will say the same thing on the stand."

"But you will have to say it in language acceptable to the commission," suggested the chairman.

Having signed the immunity waiver Mr. Whalen was sworn and took the stand. The next clash occurred when the examiner asked him: "Where do you live?" and the witness replied: "43 Fifth avenue."

"When did you move up to Fifth avenue?" asked Mr. Shearn.

"Why, that's none of your business, but I moved up there somewhere in 1918."

The examination began with a long interrogatory concerning the organization of the Whalen bus department and touching upon the investigation made by Assistant Corporation Counsel Peritz into alleged grafting, which had resulted in the indictment of one of his inspectors, Wyman, and the exoneration of others whom he had suspended temporarily. One of the latter was Frederick Richter, his present "confidential examiner," now acting as chief supervisor in the bus service.

Mr. Whalen said he greatly regretted having suspended Richter, as he now realized he had done the man an injustice.

Denies Graft Charges.

"Mr. Richter is actively engaged in politics, isn't he?" asked Mr. Shearn.

"So were you," retorted the witness, "before you went on the bench."

"Never mind that," retorted the inquisitor. "He was engaged in decent politics. He continued: 'Didn't you undertake to ascertain at that time, when you found proof positive that there was graft in your office, whether Richter or Bob Denaford, the other suspended man, were guilty?'"

"I resent the question, Judge; there was no 'graft' in my office."

"Well, what did Wyman plead guilty to?"

"A temporary supervisor—let us get this straight now—don't say 'in my office'."

"I am not making any point whether he is inside or outside your office. He is responsible to you."

"Yes, you will, because I have 6,000 men, who are not all in my office, though I have them in my department."

"But we are interested at the present moment in the bus business."

"So I notice."

"Well, it seems to be apparent."

Commenting upon Assistant Corporation Counsel Peritz's investigation, Mr. Shearn inquired, "Is a very able lawyer, is he not?"

"I should say he was as able as you," came the reply.

"Well, went on the examiner, 'we have been able here to discover a great many cases of graft. Why do you suppose he was not able to?'"

"You have not been able to discover any cases of graft."

"You heard this testimony here this afternoon, didn't you?"

"Wasn't at all interested in it; not at all," yawned Commissioner Whalen.

"You would not be interested in testimony that showed that the under sheriff of the Bronx and a Tammany district leader had come down and got a bus permit from you and got it in the name of this Tom O'Neill, while that other, Mr. O'Neill, and the Arthur Murphy estate were dividing up the profits of the business?"

"I am not at all interested in testimony of a political propaganda," the witness replied languidly.

"But that, you see, is a fact, because the checks are here in evidence."

"Not at all interested, as long as they render service to the people."

"Who rendered service, O'Neill and the Murphy estate?"

"I don't know a thing about that; I am talking about the company that got the permit."

"That does not interest you at all?"

"Not a bit; not the slightest."

"That there is a permit up there in the name of a dummy?"

"Not the slightest," reiterated the Commissioner.

"Aren't you interested in the disclosure that O'Neill and the Murphy estate, whatever that may be, are getting more than 100 per cent profit on the investment out of a 20 cent fare on a permit they obtained from you?"

"Not at all, I do not see how it is going to solve the transit question. I don't want to take up your time on that."

Swinging the examination to a consideration of the personnel of the Hyman bus chauffeurs and their financial irresponsibility, Mr. Shearn said: "You know that one after another of them has come in here and admitted that he was absolutely execution proof, and that if there were any substantial judgments against him for injuries inflicted it would be worthless. Isn't that your impression of the bulk of these people, outside, of course, of the Eighty-sixth street line?"

"I would hate to give you my impression of the system, Mr. Shearn. It has been continued in operation because of the failure of Gov. Miller and his various Legislatures to give us the relief we sought in the way of municipal ownership and operation. I do not approve of this system, never did."

"What I want is opportunity of serving the people and not the railroad king. It would be very much better to have the public officials do that than have it done in the manner in which it is done to-day."

The witness said he did not know

that Richter, or even that James L. McManus, one of his deputy Chief Bus Supervisors, was a member of the McManus Association. "I was not interested," said Mr. Whalen, "so long as they are both good Democrats. That is what I wanted—good Democrats."

Mr. Whalen, speaking of the betterment of the service, said: "We are always hoping the Legislature would see the light and grant us authority to operate buses ourselves."

"But it has been pretty apparent for a long time that it wouldn't," interpolated Mr. Shearn.

When the inquisitor came to the McCarthy case he said: "He is able to call you up on the telephone and get permits for three buses in the names of three dummies who are employees of his, and he is able to call you up on the telephone and get permits for Lynch, one in the name of a dummy, on the Eighty-sixth street line, which everybody says is the cream of the lines?"

"Quite so," was the imperturbable rejoinder, "and I was very glad to issue the permits, because they were the best buses I had seen to date, and I placed them on the best line."

"Did you know McCarthy was going to put on these buses in the names of dummies?"

"No, I didn't know anything about it."

"Didn't you think a bus permit ought to be in the name of the real owner?"

"We are not at all interested in that, Judge," replied the witness with a relapse into his lethargic mood. "But I don't know anything about Mr. McCarthy's business, not a thing."

"Well, weren't you and McCarthy and Mayor Hyman together election night last municipal election, and didn't you receive the returns together?"

"We probably were with all good Democrats."

"But weren't you three alone together receiving the election returns?"

"Oh, no."

"You were in each other's company, were you not?"

"No, I don't remember seeing Mr. McCarthy that night at all."

Doesn't Care Who Runs Them.

"Did you not say anything at all that night about how good the bus business would be after the election returns came in?"

"Now you are stretching your imagination, Judge. I cannot even follow you to that extent."

"Now, you know that McCarthy has been a contractor here and very active in Democratic politics for many years, don't you?"

"Yes."

"So apparently as a man of substance and means, do you think that it is proper and right for him, for example, to have buses in the names of dummies, so that if anybody happened to get injured they would not know who the right party was to sue, or if anybody wanted to sue if he felt wronged?"

"I am not at all interested in Mr. McCarthy's activities. I would not presume to pass judgment on the acts of Mr. McCarthy or anybody else."

"The investigation will be resumed tomorrow morning at 10:30."

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